

IN THE MATTER OF THE ONTARIO HUMAN RIGHTS CODE

and

IN THE MATTER OF COMPLAINTS MADE BY MRS. MELINDA PLANTE AND MR. BRUCE SCOTT THAT THEY WERE DENIED SERVICE AT THE METROPOLE SUPPER CLUB BY REASON OF RACE AND COLOUR.

A Board of Inquiry was convened to hear the above matters and a hearing took place on November 18th, 1971, at the Faculty of Law, University of Windsor. Mr. J. Sopinka appeared on behalf of the Ontario Human Rights Commission and Mr. F. J. Montello, Q. C. , appeared for the Metropole Supper Club and for Mr. Nick Drakich, the majority shareholder and president of such Club and the person responsible for its policies and management.

The Metropole Supper Club consists, in part at least, of a downstairs lounge, where only drinks are served, and an upstairs lounge, or nightclub, where food, drinks and entertainment are provided in a somewhat more elegant atmosphere.

The critical event preceding the laying of the complaints by Mrs. Plante and Mr. Scott occurred on December 2nd, 1971. On that date a wild and woolly fracas took place in the downstairs lounge involving the patrons present at the time and causing extensive property damage to the premises. One of a good many attending police officers, Constable W. McGhee, later testified that he had been informed by Mr. Drakich that the disturbance involved negroes from the Chatham and Detroit areas. In any event, the fight in the downstairs lounge on January 2nd was widespread and ferocious.

Two days later, on the evening of January 4th, Mrs. Plante, along with a friend, Mrs. Fitzpatrick, went to the downstairs lounge and sat down, awaiting service. Since the previous June, Mrs. Plante had been in the habit of dropping into the downstairs lounge and having a drink following the

weekly meeting of her Euchre Club, and this night was no exception. What was exceptional, however, was that Mrs. Plante (and initially, at least, Mrs. Fitzpatrick) were not served by the waitress who, instead, placed a printed note at their table informing the occupants that:

DUE TO A "DISTURBANCE" CAUSED BY YOUR
PARTY THE PAST SATURDAY - JANUARY 2nd,
1971, YOU WILL NO LONGER BE SERVED IN
THIS ESTABLISHMENT.

THE MANAGEMENT

The waitress in question indicated to Mrs. Plante that she knew nothing of what was going on and that she had received the printed note from the bartender. In his turn, the latter informed Mrs. Plante that he likewise knew nothing of the matter and that the note, or printed form, originated with the Liquor Control Board. Thereupon Mrs. Plante pursued the matter further and talked with Mr. Drakich in his upstairs office where she challenged him concerning the note and stated explicitly and emphatically that she was not in the premises on January 2nd and accordingly the note could not conceivably have any application to her. According to Mrs. Plante, Mr. Drakich responded by saying that he did not believe her, that there was nothing that he could do about it, and that she should take any complaint she might have to the Liquor Control Board. In fact, the evidence was quite clear that Mrs. Plante was not in the Metropole Supper Club on January 2nd.

The next event occurred on January 8th, 1971, when Mr. Bruce Scott, and his wife, went into the downstairs lounge of the Club. They, too, were not served but, after some delay, were likewise handed a printed note. This note was in somewhat different form than the one delivered to Mrs. Plante's table four days previously (although the effect was the same) and read:

DUE TO A "DISTURBANCE" CAUSED BY YOUR PARTY THE PAST SATURDAY - JANUARY 2nd, 1971, YOU WILL NO LONGER BE SERVED IN THIS ESTABLISHMENT. AFTER A MEETING OF THE METROPOLE HOTEL CORPORATION LIMITED A DECISION HAS BEEN MADE TO SERVE ONLY OUR NEIGHBOURS AND THE PEOPLE WE KNOW AND WILL NO LONGER SERVE STRANGERS.

THE MANAGEMENT

Neither Mr. or Mrs. Scott had been in the premises on January 2nd. Mr. Scott testified that he spoke briefly with Mr. Drakich, and that the latter simply told him that the matter was out of his hands, and thereupon Scott called the police. The latter arrived in the persons of Constable McGhee, referred to above, and his partner. Mr. Scott further testified that Mr. Drakich put in a brief appearance on the arrival of the police and, when asked by the police why the Scotts were given the note, simply answered that "we are not serving strangers" and then walked away. Mr. Scott had frequently been in the Metropole Supper Club, both for lunch and in the evenings, and his wife had been going there, on occasions, since 1963 or 1964. While this conversation was going on, and the following was corroborated by the police, three other customers entered the Club and went into the downstairs lounge where they were served. When they were questioned by Mr. Scott they informed him that this was their first time in the building. For what it is worth, two of these three customers were apparently of East Indian origin. Further, Mr. Scott talked to two blacks who were sitting outside the Club in their car who, and this too is corroborated by the police, informed Mr. Scott that they had been refused service in the downstairs lounge. In addition, Mrs. Scott called her mother on the telephone and the latter, Mrs. Marie Bush, who was a white woman, came down to the Club, entered the downstairs lounge, and was served. Mrs. Bush had never been in the Club except, perhaps, for a few minutes on an

occasion many years previous.

In his testimony, Constable McGhee stated that the clientele of the Metropole Supper Club, at the time and for about the past two years, consisted of a large percentage of black patrons, mostly from Detroit. Mr. Drakich, himself, conceded that the percentage of black and white customers was "50 - 50" and approached 60% in the upstairs dining room. Constable McGhee further testified that he went and looked for Mr. Drakich after speaking to the Scotts and that he found him and spoke to him elsewhere on the premises. According to Constable McGhee, the conversation went as follows:

"I asked him the reason for the note and why the people were not served and he said to the effect that there was a disturbance on January 2nd, involving some negroes from the Chatham and Detroit areas that were involved in a fight and that at this time, he was not serving these people and friends of theirs. I advised him that the Scotts advised us that they were not there, and as far as he was concerned, he said they were."

Constable McGhee, in his testimony, continued by saying that Mr. Drakich informed him that the Scotts could come back into the Club so long as they went upstairs into the dining or nightclub area. (There was evidence that the upstairs of the Club was heavily patronized by Detroit negroes who were well dressed and well behaved customers).

Constable McGhee concluded by saying that

"My recollection of talking to Mr. Drakich on this matter, he was happy about any negroes upstairs but because of a disturbance downstairs on the night of January 2nd, he was not letting anyone in that he thought belonged to the party".

Kevin Park, a Human Rights Officer, testified that he spoke to Mr. Drakich, following the complaints of Mrs. Plante and the Scotts, on two subsequent occasions, that is, January 14th and February 15th. In summary, his evidence was that Mr. Drakich informed him that Mr. Scott (and his wife)

were denied service because of Scott's involvement in the fight of January 2nd, and that Mrs. Plante was denied service, firstly, because she was a table-hopper and troublemaker and, alternatively, that Mrs. Plante was with Mrs. Fitzpatrick and that the latter was of dubious character and for that reason neither were served when they were seated together on January 4th. It should be noted, in passing, that there was evidence that Mrs. Fitzpatrick did receive a drink somehow or another on that occasion. This matter was raised by Mr. Park in his conversation with Mr. Drakich in the following terms:

"I raised the issue of why Mrs. Fitzpatrick was served - and he effectively declined to answer and avoided answering the question".

On the other hand, Mrs. Penny Parent, the waitress responsible for the Plante - Fitzpatrick table, testified that she refused and did not serve either Mrs. Plante or Mrs. Fitzpatrick and that, in doing so, she was acting in accordance with instructions not to serve "strangers" (Mrs. Plante) nor table-hoppers and disturbing influences (Mrs. Fitzpatrick). No such reasons were ever previously given to Mrs. Plante by either Mr. Drakich or anyone else.

The reason that was given to Mrs. Plante, and to Mr. Scott as well, that is, that they were involved in the fight of January 2nd, was completely unsupported by evidence and was not only false in fact but completely untenable. Perhaps, the change in the form of notice, between that delivered to the Plante table and that issued to Mr. Scott, was a realization that the "disturbance" policy first enunciated would not suffice as a basis of exclusion and that the "stranger" policy was therefore added as a second alternative. In any event, to leave the determination of either or both criteria to the judgment of a waitress (as in the case of Penny Parent) and to confine one's business to only such persons as are neighbours of or known to the manage-



ment, is so irresponsible and ill-advised as to be quite incredible.

In short, Mrs. Plante and the Scotts were barred from the Metropole Supper Club although there was absolutely no evidence, indeed they vehemently denied it, that they were involved in the fracas of January 2nd and, furthermore, there was no other evidence of cause on their part which would justify a refusal to serve them. On the other hand, the only evidence thereafter pertaining to a refusal to serve or the removal of white patrons was based on incidents of misbehaviour, or other cause, on the part of the latter.

Section 2 of the Ontario Human Rights Code, under which the Plante and Scott complaints were laid, provides that no person, directly or indirectly, shall deny to any person or class of persons services available in any place to which the public is customarily admitted because of the race, creed, colour, etc., of such person or class of persons. That the Metropole Supper Club is a place to which the public is customarily admitted is, of course, undisputed. In addition, it is the opinion of the Board that, albeit for a limited time, and to a limited extent, and even for understandable motives, Mr. Drakich did intend to exclude negroes, as such, from a portion of his premises for a certain period of time. In the view of the Board, however, discrimination and denial of services on grounds of race or colour is indivisible and hence the conduct of Mr. Drakich, whatever mitigating circumstances there may be, constitutes a breach of Section 2 of the Ontario Human Rights Code. The evidence leading to this conclusion has been detailed above and more than supports, it is submitted, that although Mr. Drakich welcomed negroe patronage, and treated negroes with every consideration in the past, he nevertheless in his own mind blamed a group or two groups of negroes for the fracas of January 2nd in the downstairs lounge. The disturbance on that occasion, it must be remembered, was a very serious one and quite understandably Mr. Drakich was extremely concerned and, equally understandably, was

concerned to take stringent measures to guard against any reoccurrence. To that end, in the opinion of the Board, he decided to exclude all negroes from the downstairs lounge for a limited cooling off period although, as before, welcoming their patronage in the upstairs lounge or nightclub, as indeed he did in the case of Mr. Scott. There is no question either that the fight and destruction of property which occurred on January 2nd was of such proportions as to provoke strong countermeasures and, for the time being, and in the heat of a very traumatic experience, it would seem that Mr. Drakich engaged in "over-kill". But the fact remains that this policy did, in effect, selectively discriminate against all negroes in a limited place for a limited time including Mrs. Plant and Mr. and Mrs. Scott.

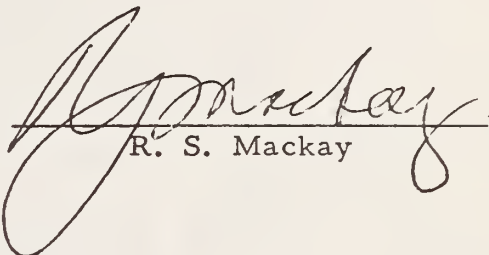
It would be remiss of the Board, however, not to emphasize that in its opinion Mr. Drakich was sincere and well motivated throughout and that he bears no malice whatsoever towards negroes but, on the contrary, has always enjoyed excellent relations with them and, it may confidently be stated, continues to do so. People, innocent and guilty alike, were caught up in the events flowing from the affair on January 2nd and although, in his over-reaction, Mr. Drakich was wrong in the solution that he sought, his character and the reputation of his business should in no sense be criticized or impugned.

Considering the above, it is recommended that the entirely legitimate grievances of the complainants will best be satisfied if Mr. Drakich sends letters to Mrs. Plante and Mr. Scott inviting them to use all the facilities of his Club, that they are welcome at all times, and that his Club will abide at all times with the provisions of the Ontario Human Rights Code. Further, towards this latter end, it is also recommended that Ontario Human Rights Code cards be prominently and permanently posted in the entrance-way of the Metropole Supper Club and, to militate against any misunderstandings by the staff, that the employees of the Metropole Supper Club be clearly and emphatically informed concerning the policy of the Club to abide faithfully

with the provisions of the Code.

All of which is respectfully submitted.

Dated at London, Ontario, this 17th day of April, 1972.



R. S. Mackay

